

**Amendment and Response**

Applicant: Timothy V. Stagg et al.

Serial No.: 09/728,697

Filed: December 1, 2000

Docket No.: 54186US017

Title: PLASTIC FILM PACKAGING WITH TEARABLE TAPE STRIP

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**REMARKS**

This Amendment is responsive to the Office Action mailed March 12, 2003. In that Office Action, the Examiner rejected 1, 2, 4, 5, 8, 10, 13, 14, 16-18, 20, 21, 24, 26, 29, 30, 32, 35, 37, 38, 41, 42, 44, 45, 47, 48, 51, and 52 under 35 U.S.C. §103(a) as being unpatentable over Riddell, U.S. Patent No. 4,773,541 ("Riddell"), in view of Osborn, U.S. Patent No. 4,397,703 ("Osborn"). Further, claims 11 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Riddell in view of Osborn, and further in view of McClintock, U.S. Patent No. 5,213,307 ("McClintock"). Claims 15 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Riddell in view of Osborn, and further in view of Kim, U.S. Patent No. 5,203,634 ("Kim"). Claims 1, 5-10, 13, 14, 17, 21-26, 29, 30, and 33-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hodson et al., U.S. Patent No. 6,316,036 ("Hodson") in view of Osborn. Claims 11 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hodson in view of Osborn, and further in view of McClintock. Claims 38, 39, 45-48, and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hodson in view of Osborn. Claims 1, 2, 5, 8, 12, 14, 17, 18, 21, 24, 28, 30, 35, and 36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Union Carbide, Great Britain Patent Publication No. 923899 ("Union Carbide"), and further in view of Osborn. Claims 11 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborn, and further in view of McClintock. Claims 38, 42, 44, 45, 47-49, 51, and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborn. Finally, the Examiner's indication that the Terminal Disclaimer previously submitted has been accepted and noted with appreciation.

With this Response, claims 1, 12, 17, 28, and 38 have been amended. It is believed that all claims are now in a condition for allowance. Notice to that effect is respectfully requested.

**35 U.S.C. §112 Informalities**

Claims 12 and 28 have been amended to correct minor informalities. The amendments do not add any new subject matter.

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**35 U.S.C. §103 Rejections**

On pages 2 and 3 of the Office Action, the Examiner rejected claims 1, 2, 4, 5, 8, 10, 13, 14, 16, 17, 18, 20, 21, 24, 26, 29, 30, 32, 35, 37, 38, 41, 42, 44, 45, 47, 48, 51, and 52 under 35 U.S.C. §103(a) as being unpatentable of Riddell in view of Osborne. The Examiner indicated that Riddell is silent in teaching a continuous, tear-resistant film having a puncture-propagation tear (PPT) resistance of at least 20 N/ply as recited in claims 1, 17, and 38. The Examiner relied on Osborne as evidence of the teaching that polyethylene films used for commercial bags within the shipping industry have a PPT resistance of greater than 20 N/ply as referenced at columns 19 and 20, Example 7 and Table 2.

The Examiner is correct in that Osborne reference does show a polyethylene film having a PPT resistance of greater than 20 N/ply. However, there is no teaching or suggestion in either Riddell or Osborne to combine the two references. In fact, to combine the two references of Riddell and Osborne would effectively destroy the functionality of the teachings of Riddell. The polyethylene films of Riddell are inherently limited to a polyethylene film having a PPT resistance of less than 20 N/ply (e.g., see page 17 of the pending application, Table 2, the PPT tear resistance value for "PET" film). In order to provide sufficient stiffness to both maintain the product(s) and serve as the display tray upon opening, the packaging material must be inherently stiff. Tear resistant films having a PPT resistance of less than 20 N/ply do not exhibit stiffness sufficient to serve as a display tray. If applied to the configuration of Riddell, the film of Osborne would, once torn, either lose its "tightness" above the contained roll products such that the products would fall out; or remain so tight about the products that they could not be removed. The film of Osborne, while useful for shipping purposes, will simply not provide the display trays required of Riddell, such that Riddell and Osborne cannot be combined without destroying the functionality of Riddell.

Accordingly, it is respectfully submitted that it would not be obvious for one skilled in the art to modify the package taught by Riddell by utilizing packaging materials other than kraft paper or similar material by substituting a tear-resistant film characterized by a PPT resistance of at least 20 N/ply, such as the film of Osborne. Further, even if such a suggestion can be supported, the resulting combination does not satisfy at least the limitation of the tearable tape strip configured to controllably tear an opening through the film that otherwise has a PPT of at

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least 20 N/ply. The combination inner pull strip and outer guide tape of Riddell is specifically provided to tear materials exhibiting low PPT characteristics (e.g., kraft paper). As such, Riddell is entirely unconcerned with the dramatic difficulties presented when attempting to tear material having a high PPT resistance (e.g., at least 20 N/ply). Thus, the pull strip/guide tape of Riddell applied to the 20 N/ply PPT material of Osborne may or may not achieve tearing of the film, but certainly does not enable controllably tearing (as defined at page 14, lines 3-6) film having PPT resistance of at least 20 N/ply.

Therefore, it is respectfully submitted that there is no teaching or suggestion to combine Riddell and Osborne without destroying the functionality of Riddell and the resulting combination does not render the claimed invention obvious. Thus, it is respectfully requested that this rejection be withdrawn.

On pages 3 and 4 of the Office Action, the Examiner rejected various dependent claims under 35 U.S.C. §103(a) as being unpatentable over Riddell in view of Osborne and further in view of McClintock or in view of Kim. These rejected claims are dependent claims depending from either independent claim 1, 17, or 38. As previously described, it is respectfully submitted that independent claims 1, 17, and 38 are in allowable form. Therefore, it is also submitted that the referenced dependent claims are similarly allowable over these references.

On page 5 of the Office Action, the Examiner rejected claims 1, 5-10, 13, 14, 17, 21-26, 29, 30, and 33-35 under 35 U.S.C. §103(a) as being unpatentable over Hodson et al. in view of Osborne. This rejection is similar to the previous rejection based upon Riddell in view of Osborne. Specifically, the Examiner indicated that Hodson is silent in teaching a continuous, tear-resistant film having a PPT resistance of at least 20 N/ply, as recited in independent claims 1 and 17. The Examiner relied upon Osborne as evidence of polyethylene films having a PPT resistance of greater than 20 N/ply.

Although Hodson references PET films or other high barrier composition structures, Hodson is inherently limited to films and high barrier composite structures having a PPT resistance of less than 20 N/ply. If the films of Hodson have a PPT resistance of greater than 20 N/ply (i.e., incorporating the films of Osborne having a PPT resistance of greater than 20 N/ply), the film would be unacceptable for the desired purposes once heated in the range of 180° – 220°, as required in Hodson. Thus, utilizing films having the characteristics of those disclosed in

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Osborne would compromise the structural integrity of the films of Osborne and destroy the functionality of the sealed packages of Hodson. Further, even if a requisite suggestion could be identified, the resulting combination does not enable or satisfy at least the limitation of controllably tearing the 20 N/ply PPT resistance film. The tear tape of Hodson is not intended for use with film exhibiting a high PPT resistance characteristic (e.g., at least 20 N/ply). Thus, when applied to such a film, though tearing may or may not be accomplished, controllable tearing is not enabled. Therefore, since it would not be obvious for one skilled in the art to modify the packaging taught in Hodson by applying films of Osborne and the resulting combination does not suggest or enable a tearable tape strip configured to controllably tear a film exhibiting at least 20 N/ply PPT resistance, it is requested that the rejection of the pending claims based upon the combination of Hodson and Osborne be withdrawn.

On page 6 of the Office Action, the Examiner rejected claims 11 and 27 as being unpatentable over Hodson in view of Osborne, and further in view of McClintock. Claims 11 and 27 are dependent claims which depend from independent claims 1 and 17, respectively. As previously described, it is respectfully submitted that claims 1 and 17 are in allowable form; therefore, it is submitted that dependent claims 11 and 27 are similarly allowable.

On page 7 of the Office Action, the Examiner rejected claims 38, 39, 45-48, and 52 under 35 U.S.C. §103(a) as being unpatentable over Hodson in view of Osborne. However, similar to the rejection of independent claims 1 and 17 and dependent claims therefrom, there is no teaching or suggestion to combine Hodson and Osborne without destroying the functionality of Hodson. Therefore, it is believed that independent claim 38 and all claims depending therefrom are in proper form for allowance.

On pages 8 and 9 of the Office Action, the Examiner rejected claims 1, 2, 5, 8, 12, 14, 17, 18, 21, 24, 28, 30, 35, and 36 under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborne. Similar to the previous rejections, the Examiner indicated that Union Carbide is silent with respect to a film having a PPT resistance of at least 20 N/ply, as recited in independent claims 1 and 17. The Examiner indicated that Osborne is relied on as evidence of a film having a PPT of at least 20 N/ply.

Although Union Carbide references films, these films are inherently limited to films having a PPT resistance of less than 20 N/ply. In fact, to utilize the films in Osborne having a

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PPT resistance of greater than 20 N/ply would destroy the functionality of the films of Union Carbide. In particular, the films of Osborne would not be capable of withstanding the heat required in the lamination process of Union Carbide without compromising the structural integrity of the films of Osborne. Therefore, it is submitted that it would not be obvious for one skilled in the art to modify the package taught by Union Carbide with that of the films of Osborne. Further, even if a requisite suggestion could be identified, the resulting combination does not enable or satisfy at least the limitation of controllably tearing the 20 N/ply PPT resistant film. The tear tape of Union Carbide is not intended for use with film exhibiting a high PPT resistance characteristic (e.g., at least 20 N/ply). Thus, when applied to such a film, though tearing may or may not be accomplished, a tearable tape strip configured to controllably a film characterized by a PPT resistance value of at least 20 N/ply is not enabled. Therefore, it is respectfully submitted that independent claims 1 and 17, and dependent claims depending therefrom, are in proper form for allowance.

On page 9 of the Office Action, the Examiner rejected dependent claims 11 and 27 under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborne, and further in view of McClintock. Claims 11 and 27 are dependent claims which depend from independent claims 1 and 17, respectfully. It is believed that these dependent claims are in proper form for allowance as previously discussed.

On pages 9 and 10, the Examiner rejected claims 38, 42, 44, 45, 47, 48, 49, 51, and 52 under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborne. It is believed that independent claim 38 and claims depending therefrom, similar to independent claims 1 and 17 and claims depending therefrom, are patentably distinguishable over the combination of Union Carbide and Osborne. Therefore, it is believed that independent claims 38, and claims depending therefrom, are in proper form for allowance.

**Allowable Subject Matter**

In light of the above, Applicant believes independent claims 1, 17, and 38, and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.

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**CONCLUSION**

It is believed that all claims are now in a condition for allowance. Notice to that effect is respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 500471.

The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

Timothy V. Stagg et al.,

By their attorneys,

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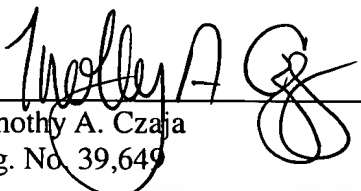
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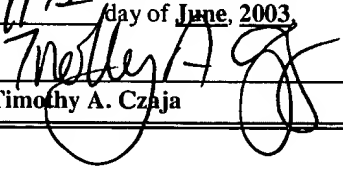
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**CERTIFICATE UNDER 37 C.F.R. 1.8:**

The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 11<sup>th</sup> day of June, 2003.

By   
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Name: Timothy A. Czaja